

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

NPM, INC.

and

(b) (6), (b) (7)(C) an Individual

Case 32-CA-238817

and

(b) (6), (b) (7)(C) an Individual

Cases 32-CA-238824
32-CA-240297

and

(b) (6), (b) (7)(C) an Individual

Case 32-CA-239938

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 32-CA-238817, which is based on a charge filed by (b) (6), (b) (7)(C) Cases 32-CA-238824 and 32-CA-240297, which are based on charges filed by (b) (6), (b) (7)(C) and Case 32-CA-239938, which is based on a charge filed by (b) (6), (b) (7)(C) respectively, against npm, Inc. (Respondent) are consolidated. This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1.

(a) The charge in Case 32-CA-238817 was filed on April 1, 2019, and a copy was served on Respondent by U.S. mail on April 2, 2019.

(b) The first-amended charge in Case 32-CA-238817 was filed on May 21, 2019, and a copy was served on Respondent by U.S. mail on May 23, 2019.

(c) The charge in Case 32-CA-238824 was filed on April 1, 2019, and a copy was served on Respondent by U.S. mail on April 2, 2019.

(d) The first-amended charge in Case 32-CA-233824 was filed on May 24, 2019, and a copy was served on Respondent by U.S. mail on May 28, 2019.

(e) The charge in Case 32-CA-239938 was filed on April 18, 2019, and a copy was served on Respondent by U.S. mail on April 19, 2019.

(f) The charge in Case 32-CA-240297 was filed on April 25, 2019, and a copy was served on Respondent by U.S. mail on April 19, 2019.

(g) The first-amended charge in Case 32-CA-240297 was filed on May 24, 2019, and a copy was served on Respondent by U.S. mail on May 28, 2019.

2.

(a) At all material times, Respondent has been a corporation with an office and place of business in Oakland, California, Respondent's facility, and has been engaged in software development and the licensing of open source technology products and software.

(b) In conducting its operations during the 12-month period ending April 30, 2019, Respondent has provided services valued in excess of \$50,000 for various enterprises located in States other than the State of California.

3.

At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

| | | |
|---------------------|---|---------------------|
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |
| (b) (6), (b) (7)(C) | - | (b) (6), (b) (7)(C) |

5.

At all material times, (b) (6), (b) (7)(C) has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6.

(a) Since at least March 22, 2019, Respondent has maintained the following provisions in a Severance Agreement that it offered to employees:

9. No Claims or Lawsuits. Employee agrees not to bring any claim, action, suit or proceeding against Company or any of the other Released Parties regarding the matters settled, released and dismissed hereby, including, but not limited to, any claim, action, suit or proceeding raised or that could have been raised in connection with any claim or matter which is the subject of the Release. Employee further agrees not to assist any other person in prosecuting an action, suit, or proceeding against Company or any other Released Parties, except when subpoenaed to testify under oath as a witness at a deposition, arbitration, trial, administrative hearing, or similar judicial or quasi-judicial proceedings. Employee

further agrees that this Agreement is a bar to any such claim, action, suit or proceeding. (underline added)

(b) Since at least March 22, 2019, Respondent has maintained the following provisions in a Severance Agreement that it offered to employees:

13. Non-Disparagement Employee agrees that Employee shall not, at any time, make, directly or indirectly, any written statements (including statements on social media such as Twitter, Facebook, and Linked-In) that are disparaging of Company, any of its subsidiaries, affiliates, successors or assigns, including any of its present or former officers, directors or employees. Any violation by Employee of this non-disparagement obligation shall constitute a material breach of this Agreement, entitling Company to seek and recover any and all consequential and foreseeable damages resulting from that breach, including but not limited to forfeiture of consideration and recovery of payments and other consideration given pursuant to Paragraph 3 herein.

(c) Since at least March 22, 2019, Respondent has maintained the following provisions in a Severance Agreement that it offered to employees:

15. Cooperation. Employee agrees reasonably to cooperate with Company with respect to the prosecution and/or defense of legal claims which arose during Employee's tenure as an employee of Company, or which relate to events which occurred during Employee's tenure as an employee of Company or to which Employee has any information. Such cooperation shall include, but is not limited to, making Employee reasonably available for interview by Company and/or its counsel; reviewing and/or identifying documents, which must be reasonable in volume and allow Employee reasonable time for such review, testifying in deposition, arbitration, or trial; and further that Employee shall notify Company in writing if Employee is ever subpoenaed or otherwise requested to testify in any matter involving Company within five (5) business days of having been properly served with such a subpoena.

7.

(a) About February 27, 2019, Respondent, by (b) (6), (b) (7)(C) during a meeting with employees at a work conference in Napa Valley, California, impliedly threatened employees with unspecified reprisals for raising group concerns about their working conditions.

(b) About March 22, 2019, Respondent, by (b) (6), (b) (7)(C) by videoconference, prohibited employees from discussing terminations with other employees.

(c) Respondent, by (b) (6), (b) (7)(C)

(i) About March 25, 2019, via videoconference, impliedly threatened that Respondent would terminate employees who engaged in Union activities; and

(ii) About the week of March 25, 2019, via Respondent's Keybase messaging system, impliedly threatened employees with unspecified reprisals for discussing employee layoffs.

8.

(a) Since at least February 12, 2019, Respondent believed that its employees were engaged in concerted activities with each other for the purposes of mutual aid and protection, by discussing amongst themselves their concerns about management, increased workload, and employee retention as described in a February 12, 2019 letter presented to Respondent's (b) (6), (b) (7)(C)

[REDACTED]

(b) Since at least February 25, 2019, Respondent's employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) engaged in concerted activities with each other and/or other employees for the purposes of mutual aid and protection, by discussing amongst themselves and/or with other employees their concerns about management, increased, workload and employee retention.

(c) On (b) (6), (b) (7)(C) 2019, Respondent discharged employees (b) (6), (b) (7)(C)

(d) Respondent engaged in the conduct described above in paragraph 8(c) because Respondent believed or mistakenly believed that the named employees engaged in the conduct described above in paragraph 8(a) and/or 8(b), and to discourage employees from engaging in these or other concerted activities.

(e) Respondent engaged in the conduct described above in paragraph 8(c) because the named employees discussed forming a union and engaged in activities in support of a union, and to discourage employees from engaging in these activities.

9.

By the conduct described above in the underlined portion of paragraph 6(a), paragraphs 6(b), 6(c), 7, 8(c) and 8(d), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10.

By the conduct described above in paragraphs 8(c) and 8(e), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6, 7, 8(d), 8(c), and 8(e), the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative (b) (6), (b) (7)(C) to read the notice to the employees on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's representative (b) (6), (b) (7)(C). Further, the General Counsel seeks an order requiring that Respondent reimburse each employee named above in subparagraph 8(c) for all search-for-work and work-related expenses regardless of whether that employee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before June 24, 2019, or postmarked on or before June 23, 2019.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

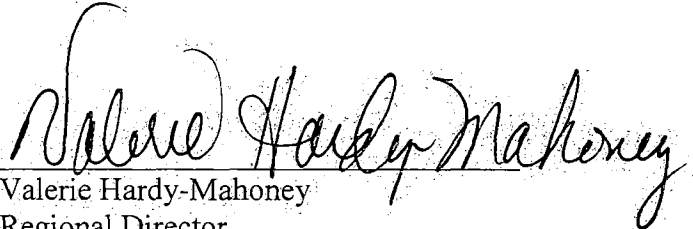
unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on July 8, 2019, at 9:00 a.m., in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California this 10th day of June 2019.

A handwritten signature in cursive script, reading "Valerie Hardy-Mahoney", written over a horizontal line.

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Attachments